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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/678,537 10/03/00 LASHLEY

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EXAMINER

QM12/0227

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GEHMAN, R

ART UNIT

PAPER NUMBER

3728

DATE MAILED:

02/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/678557

Applicant(s)

Lashley

Examiner

Gehner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453-O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: ____

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1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) **in the first sentence** of the specification (37 CFR 1.78). The reference is in the second paragraph, which is improper. Such reference should also be updated to reflect its issuance.

2. Claim 15 is objected to because of the following informalities: In line 7, "is each" is ungrammatical and should be --are each--. Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-3 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Conner (2,217,644). Claims 1-2, 4, 6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein (4,757,898). Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by

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Buchholz et al (4,785,953). Claims 1-2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmutz et al (6,164,448). Each discloses an apparatus comprising a base (5; 21; 24; 1; respectively) having a plurality of receptacles (5a; defined by 26; 54; 3), a plurality of containers (1; 22; 18; 5) including means (6; lower surface engaged by 26; lower surface of 18 frictionally engaged; outer wall of the containers (see Figures 1d and 1e) frictionally engaged) for attaching, each of the containers inherently stackable on one another.

As to claim 2, Conner, Klein and Schmutz et al each disclose a first dimension of the container (6; wall of 22; 34) slightly greater than a first dimension (top of 5; defined by 26; 48) of its corresponding receptacle.

As to claim 3, Conner and Buchholz et al each disclose a first dimension of the container (cylindrical wall of 1; other than 34) slightly lesser than a first dimension (top of 5; 48) of its corresponding receptacle.

As to claim 4, Klein discloses a plurality of walls (each side defined by elements 26).

As to claim 5, Buchholz et al disclose a recess (18).

As to claim 6, Klein and Schmutz et al each disclose rows and columns.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Klein and Schmutz et al. To provide specific numbers of columns and rows to provide a similar arrangement to that of Klein and Schmutz et al would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Conner and Buchholz et al. To provide specific numbers of receptacles in a single row to provide a similar arrangement to that of Conner and Buchholz et al since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Conner, Klein and Buchholz et al as applied to claim 1 above, and further in view of either one of Moore (4,624,383). Moore discloses employing a protrusion-recess combination in a container to render the container interlockingly stackable. To modify the individual container of the original rejection

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employing the stacking teaching of Moore would have been obvious in order to better secure plural containers to one another, as suggested by Moore.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Conner, Klein and Buchholz et al as applied to claim 1 and further in view of Ruff (D328,706). Ruff discloses providing a container of plural sides. To further modify the basic concept of the prior art employed against claim 1 employing the multi-sided shape teaching of Ruff would have been obvious, as a mere change in shape would not appear to distinguish any new and unexpected result.

10. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Conner and Buchholz et al in view of either one of Schaffer (692,166) and Sandhage (3,731,819). Schaffer and Sandhage disclose employing a multiple container arrangement for pharmaceuticals. To employ the concept of either one of Conner and Buchholz et al for particular contents such as in either one of Schaffer and Sandhage would have been obvious in order to derive the advantages of Conner and Buchholz et al for particular contents.

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-3, 5-9 and 11-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4 and 11-13 of U.S. Patent No. 6,161,696. The claimed structure of the apparatus is claimed and described in the patented claims of the earlier application and to reissue claims covering the same structure would comprise obviousness-type double patenting.

13. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

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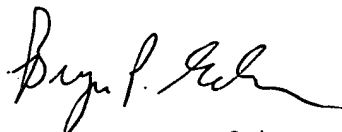
If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Valerie Douglas at (703) 308-1337.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Gehman of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Bryon Gehman whose workweek is Tuesday through Friday and telephone number is (703) 308-3866.

BPG

February 23, 2001


Bryon P. Gehman
Primary Examiner